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693 The existence of this latter is /325/ intermittent. It appears
692 most often as linked to the progress of personal power and naturally also to the nearness of the towns. He is supported, but also imposed and oriented by the chief. Nevertheless, he always judges "by mutual accord," s-tarad'i, and his intervention is challengeable, like that of any other arbiter. But is it indeed a matter of an arbiter? Some old documents will permit analyzing the institution better.

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69 /The following four paragraphs are in small type in the original source./ There is first an act of 923 Heg.: 1518, of the a. H'adduyw, recording a verdict rendered in a landed-property case, and which gives to one of the parties the ownership of parcels seized as counterpart of the expenses of mortuary services. And this in a great meeting of Seksawa and Idaw i-yzimmer. The h'akim bases his authority upon the mutual and written appeal of the two adversaries to his court, called court of the char^c /Sharia/. "of the law": ba^cda rid'a'i-him bi-majlisi'ch-char^ci laday-nâ bi-rasmi't-tarâd'i.

Another act of 1109 Heg.: 1698, of the I. Geryun, in very bad Arabic, relates a complete procedure. The moqaddem and the jemfa place the case of two parties before a fqi designated by lot, ba^cda d'arabat la-hum al-qur^ca, "so that he may strike them with the sword of the law." It is a matter of a habous [794] /wakf/ lawsuit. The two litigants promise, in case of nonappearance, to pay into the hands of the moqaddem three mithqâl-s in penalty. Initial citation and appearance in court, designation of a judge, referral, fine in the event of nonappearance: all the moments of the first part of the procedure are brought to light here. [681]

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69 Again a tarâd'i consignation dated from 1122 Heg.: 1710, and coming from two personages from Alus, who solemnly empower a "cadi" of the a. Tikssit to act for them in making a settlement. "They are in agreement (to place) the char^c of God in the hands of the fqi such and such ... for all that has become clouded between them in the case of land, trees, houses,

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69 grindstones, manāhil (transhumance shelters), inanimate goods, dry crops, and all other claims of the one upon the other."

We have an example of what these verdicts may be, when the magistrate makes a point of culture, in a long writing of 1118 Heg.: 1707, where a scholar originally from the a. Ish'āq develops, in good writing with comparisons and quotations, his point of view on a habous /wakf/ lawsuit. It is a matter of a patrimony disputed among branches of devolutionaries, some of whom have died out, munqarid'īn, a type of case that war and epidemics must have made frequent. The learned man acts on the authority of an indirect quotation from ar-Rasmūkī, then of a Meccan precedent, of the Fēs /Fez/ jurist az-Zaqqāq, still others... Such an argument, he says, is null, nonexistent, ujūdu-hu ka'l-^cadam. It is like a mirage that the imagination believes to be of water, whereas if one reaches it, one no longer finds anything.

693 One appreciates this paradox of atmosphere, if one may venture to say it, which inspires in the humble montagnard jurist the poetry of the camel driver. The respect given by apparently barbarous cantons to the /326/ scholar, zaouia sheik or "cadi" is significant (1).

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1. Can we go further than these observations? Does the antiquity of this procedural dualism permit evoking, across the gulf of time and distance, the division of the Roman procedure into two phases? We are far from the idea of finding again in the Atlas something that would recall the profound originality of the formula. But perhaps in the referrals to episcopal arbitration, frequent after Constantine, we can find something exciting for the imagination, if not serious for comparison. The first hypothesis has already been set forth by G. Surdon,

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/footnote 1 continued/ Esquisses de droit coutumier berbère marocain /Outlines of Moroccan Berber customary law/, 1928, p. 185, n. 1. One finds in this work very exact, but incomplete and scattered notations. For example, on the alwāh', pp. 12, 142, 179, 181; on the instinct for patrimonial preservation among the Imazighen, pp. 35 sq.; on the true character of the rahn, pp. 196 sq.; the asghurt, p. 128. We are obliged to point out these coincidences with our own observations.

- 69 And it is no less so that such a judge, often far from the place of litigation, cut off from any possibility of investigation, and chosen even because of that no doubt, does not base his decision on objective data at all, indeed sometimes not even on hearing the two parties. The decision is often presented in fact in the form of a letter delivered to one of the litigants, and undoubtedly solely on the evidence of his statement. One might be surprised by the fact that a rural society entrusts its most precious interests to such a whimsical magistracy. But, on the one hand, [627] the great majority of the conflicts are under the jurisdiction of prelaw and hence never come to procedural argument. And, on the other hand, the latter brings into play the not negligible factors of auctoritas. First, the weight of the person, of the writing, and of the reference to the Law. Then, the recourse to an external culture and ethic, felt as such, but to which one adheres at the appointed time and place, no more, and which one has intervened when it is necessary and when one wishes. In the second phase of this procedural splitting is read one of the attitudes of Chleuh /Shluh/ comportment with respect to Arabism and external civilization in general. We shall not engage here in a discussion of social psychology, which could lead far.